

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10760 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA

Versus

TULSHIBHAI KODABHAI

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Appearance:

MR JJ YAJNIK for Petitioners  
MR PH PATHAK for Respondent No. 1

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE A.L.DAVE

Date of decision:23/11/1999

CAV JUDGEMENT

Per Thakker, Actg. C.J.

This petition is filed by the Union of India and others

against the judgment and order, passed by the Central Administrative Tribunal, Ahmedabad Bench ('CAT') in OA No. 205 of 1996 on September 16, 1998.

Respondents were the original petitioners. They filed the above OA before CAT restraining the authorities from conducting Vive Voce on March 25, 1996 and further restraining from declaring and/or giving appointments pursuant to declaration of result of written test on March 12, 1996 and March 20, 1996 respectively.

It was alleged by the petitioners in OA that respondents Nos. 2 and 3- Senior Divisional Personnel Officer and Divisional Commercial Manager, Western Railway, Bhavnagar adopted favouritism towards ST/ SC employees while conducting and declaring result of written examination for the post of T.C. in the pay scale of Rs. 950-1500 and by declaring passed several candidates illegally, arbitrarily and with mala fide intention and oblique motive. Such action was illegal, improper . unjust and liable to be quashed and set aside. It was also their case that Rules and Regulations for conducting examination were not followed and the action was unlawful. An affidavit in reply was filed by the authorities controverting averments made and allegations levelled against them and contending that no illegality was committed by the authorities in conducting the examination and OA was liable to be dismissed.

CAT, after considering rival contentions of the parties and on the basis of pleadings, raised various issues. On the basis of evidence adduced by the parties, CAT recorded certain findings.

In para 35 of the order, CAT observed as under:

"To sum up, (i) the respondents Nos. 2 and 3, being the heads of the personnel department and the Commercial department respectively, actively associated with the process of written test.

(ii) The written tests were conducted on two dates with one common compulsory question after a gap of about three months. This would vitiate the written test.

(iii) The Assistant Personnel Officer who conducted the examination and the process of coding was under the direct control of the

respondent Nos.2 and 3 and was not a member of the selection board and, therefore, was not competent to conduct the examination under rule 3.6.12. This is not to suggest that the respondent No.2 had asked for and got the coded numbers which would identify the candidates. However, the intention of the rule is that the examination and valuation should not only be fair but should be seen to be fair. The fact that the officer who evaluated the answer sheets had access to the coded numbers clearly goes against the purpose sought to be achieved under rule 3.6.12.

- (iv) Answer books were not signed by one invigilante as required under rule 3.6.11.
- (v) The evaluation of the answer books was done by respondent No. 2 who is not a member of the selection board. It was in violation of rule 219 (b) as referred to above.
- (vi) The answer books were not properly evaluated as have been done by the tribunal on their scrutiny in presence of the learned counsel of the parties during the hearing.
- (vii) The relaxed standard in case of SC/ST is the written test for declaring them eligible for viva voce test was not permissible in view of the dictum of the Supreme Court in Vinod Kumar's case (supra).
- (viii) The allegation of mala fide is not established."

The above decision of CAT is challenged by the authorities before us. We have heard Mr.J.J.Yagnik for the petitioners and Mr. P.H.Pathak for the respondents (on caveat).

It was strenuously urged by Mr. Yagnik, for the petitioners that CAT has committed an error of law apparent on the face of record by interfering with the policy decision and in setting aside written test conducted by the authorities. Such action was illegal, contrary to law and deserves to be quashed and set aside. He further submitted that CAT ought to have considered the most material and vital fact that the petitioners participated in the said test, took chance to get the

examination cleared and when the result was not favourable, they challenged the selection which could not have been done. CAT, according to him, in these circumstances, ought to have invoked the doctrine of estoppel and dismissed the petition. He also urged that even if there was a common question on two different dates of the examination, it would not vitiate the test and from such fact, no finding could be recorded that it was done with a view to favour a particular community. CAT also committed an error, according to him, in observing that there were corrections, erasures, overwritings and scoring off of marks. According to Mr. Yagnik, if there was an error on the part of examiner, in assessing answer books, it was open to him to correct marks in the answer books. From that, however, it cannot be said that such correction was made with a mala fide intention or oblique motive. Mr. Yagnik also submitted that relaxation of standard for SC/ ST and other backward class candidates was permissible and such action cannot be said to be unlawful. Finally, it was submitted that CAT was exercising power of judicial, review and it had no appellate power against the decision taken by the authorities. It, therefore, could not have acted as if it were an appellate authority by substituting its finding for the finding recorded by the authorities. He, therefore, submitted that the petition deserves to be admitted and interim relief requires to be granted.

Mr. P.H. Pathak, learned counsel for the respondent, on the other hand, supported the order passed by CAT. He submitted that on the basis of pleadings of parties and evidence on record, CAT reached a finding that the written test was not conducted in accordance with law. Such finding is a finding of fact arrived at on the basis of evidence and it cannot be interfered with by this Court in exercise of powers under Article 226/227 of the Constitution of India. He also submitted that respondents Nos. 2 and 3 who were Heads of Department, actively associated with the process of written test which could not have been done by them. The said fact was clearly established from the record and that by itself, was good and sufficient ground for setting aside the process. He also submitted that written tests were conducted on different dates i.e. November 30, 1995 and February 19, 1996. Thus, there was an interval of about three months and yet, one common question was repeated which was compulsory. This has seriously prejudiced other candidates and it went to the root of the matter. CAT was, therefore, justified in quashing and setting aside the selection. He also submitted that answer books were not properly evaluated. A finding to that effect was

recorded by CAT not only on the basis of pleadings and arguments but after scrutinising the answer books which were called for by CAT, and in the presence of learned counsel for the parties, at the time of hearing, such defects were found. Regarding relaxation, in the submission of Mr. Pathak, CAT rightly held that the point was concluded by a decision of the Supreme Court in Vinod Kumar vs. Union of India and others, (1996) 6 SCC 580. Our attention was also invited to Ratan Chand Gupta vs. Union of India, 1993 Lab. I.C. 1672 (SC).

In the facts and circumstances of the case, in our opinion, it cannot be said that CAT has committed an error of law and/or of jurisdiction which requires interference by us in exercise of powers under Article 226/227 of the Constitution of India.

On the basis of pleadings of parties and evidence on record, CAT recorded certain findings. They relate to important matters such as, though written test were conducted on two different dates, there was a common question which was compulsory and the time gap between the first test and the second test was considerably long i.e. about three months. Again, a finding was recorded that answer books were not properly evaluated. The said finding was based not only on the basis of pleadings of parties and contentions of learned counsel for the petitioners but before recording such finding, CAT called for original answer books and they were scrutinised at the time of hearing in presence of counsel of both the parties. CAT, in our opinion, was also right in observing that it was not permissible for the authorities to relax the standard of passing for reserved categories of candidates as it was clearly against the law laid down by the Supreme Court in Vinod Kumar. In that case, the Apex Court observed as under:

"We are, therefore, of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16 (4) in view of the command contained in Article 335 of the Constitution. In other words, even if it is assumed for the sake of argument that reservation is permitted by Article 16 (4) in the matter of promotions, a provision for lower qualification marks or lesser level of evaluation is not permissible in the matter of promotions, by virtue of Article 335.

If so, there can be no question of such a provision or concession as it is called by the Tribunal, being served by the declaration in para 829 of the said judgment."

Argument regarding doctrine of estoppel also does not lead the case of the authorities further. If the entire process of holding of written test was contrary to law, the so called test cannot be said to be real test in the eye of law. According to CAT, it had been done only with a view to favour a particular class of employees. One and all can make grievance against such process as it goes to the root of the matter. A duly constituted tribunal, taking into account the facts and circumstances, can consider whether the test was conducted in accordance with law and the same was legal and valid. Non-selection of a particular candidate is one thing and holding of selection contrary to law and against fair procedure is altogether a different thing. In case of former, the Court of law may refuse to interfere invoking a rule of estoppel but in the latter case, the Court will have to consider the circumstances in their entirety, and if satisfied, it can grant relief by quashing selection process in its entirety. In the instant case, CAT has followed the second alternative and we find no infirmity therein.

For the foregoing reasons, we see no infirmity in the order passed and directions issued by CAT. As there is no substance in the petition, it deserves to be dismissed and is accordingly dismissed. Notice is discharged. Ad-interim relief stands vacated, In the facts and circumstances, no order as to costs.

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parekh